



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 23, 2004

Mr. Brian Anthony Quintero
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2004-1309

Dear Mr. Quintero:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196611.

The Harris County Tax Assessor-Collector and County Attorney (the "county") received a request for twelve categories of information, including all documents pertaining to certain information regarding the bonds and insurances of the Tax Collector, County Judge, and four named Commissioners. You indicate that a social security number is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

First, you explain that there is no information responsive to the request for an "assessment" of a property because any such document that exists would be filed with the Harris County Appraisal District. You also explain that the county does not have the requested bonds and insurance instruments of the Harris County Judge and the four named Commissioners. The Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time that the government body received the request for information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); *see also* Open Records Decision No. 452 at 3 (1986). Furthermore, we note that a governmental body is not required to obtain information from another governmental entity so long as the entity does not hold the information on behalf of the governmental body. *See* Open Records Decision No. 534 (1989). Accordingly, we conclude that the county need not release any information in response to the request for

the insurance instruments of the Harris County Judge and the four named Commissioners and for the property "assessments."

You also contend that part of the request would require the county to perform legal research in order to create and produce documents that would be responsive to those request items. We note that in Open Records Decision No. 563 (1990), a requestor sought documents showing the authority of a non-profit corporation to engage in various activities. We ruled as follows:

While couched as requests for documents, these are essentially requests for federal and state laws and regulations governing the activities of the corporation and for a statement of the corporation's interpretation of these provisions. The Open Records Act does not require a governmental body to perform legal research for a requestor nor to answer general questions.

Id. at 8. Thus, we find that the county is not required to answer factual questions or perform legal research in response to a portion of this request.

You have submitted the bond and relevant insurance instruments filed by the tax assessor. You assert that the submitted social security number found in the bond is confidential. Section 552.117(a)(1) excepts from disclosure the social security number of a current official who timely requests that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received by a governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the county may only withhold the social security number under section 552.117(a)(1) if the official made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received by the governmental body. The county may not withhold this information under section 552.117(a)(1) if the official did not make a timely election to keep the information confidential.

We note that even if section 552.117 does not apply, the social security number may be excepted from required public disclosure under section 552.101 of the Act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Gov't Code § 552.101 (information made confidential by statute is excepted from disclosure); Open Records Decision No. 622 (1994). We have no basis for concluding that the social security number is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, you should ensure that it was not obtained or is not maintained by the county pursuant to any provision of law,

enacted on or after October 1, 1990. The county must release the remaining submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

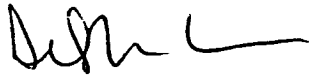
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Debbie K. Lee', with a long horizontal flourish extending to the right.

Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 196611

Enc. Submitted documents

c: Mr. Zane Evan
Diversified Resource Management
18302 Vintage Wood Lane
Spring, Texas 77379
(w/o enclosures)